

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

CLARA NEWSOME

vs.

**STATE FARM LLOYDS AND
ERIC D. THIBAUT**

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**CIVIL ACTION NO. _____
JURY REQUESTED**

DEFENDANT STATE FARM LLOYDS' NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

STATE FARM LLOYDS (hereinafter, "State Farm") Defendant in the above-styled and numbered cause, files this Notice of Removal of the present action from the 434th Judicial District Court of Fort Bend County, Texas to the United States District Court for the Southern District of Texas, Houston Division. In connection with this Notice of Removal, State Farm would respectfully show unto the Court as follows:

I.

PROCEDURAL BACKGROUND

1. Plaintiff Clara Newsome filed this action on December 18, 2015 against State Farm Lloyds and Eric D. Thibault in the 434th Judicial District Court of Fort Bend County, Texas. That case was docketed under cause number 15-DCV-228656 (the "State Court Action").

2. State Farm was served with process on January 6, 2016. Upon information and belief Defendant Eric D. Thibault has not been served with process.

3. State Farm files this Notice of Removal pursuant to 28 U.S.C. §1446 to remove the State Court Action from the 434th Judicial District Court of Fort Bend County, Texas to the United States District Court for the Southern District of Texas, Houston Division.

4. Plaintiff's Original Petition filed in the State Court Action included a jury demand.

II.
NATURE OF SUIT

5. This lawsuit involves a dispute over the alleged non-payment of insurance benefits and the handling of Plaintiff's claim for damages allegedly caused by a storm "on or about June 16, 2015." Petition at ¶ 14. Plaintiff asserts causes of action against State Farm and independent adjuster Eric D. Thibault for violations of the Deceptive Trade Practices Act, Chapter 541 of the Insurance Code and, solely as to State Farm, breach of contract, breach of the duty of good faith and fair dealing, and violations of Chapter 542 of the Insurance Code.

6. Plaintiff reported her claim on July 19, 2015, and independent adjuster Eric D. Thibault inspected the insured property on July 24, 2015. Shortly after the inspection, Thibault sent a decision letter and estimate to Plaintiff showing covered losses did not exceed the deductible.

7. Plaintiff's counsel then instituted the current suit on December 18, 2015.

III.
BASIS OF REMOVAL

8. The Court has jurisdiction over this action under 28 U.S.C. § 1332 because there is and was complete diversity between all parties and the amount in controversy exceeds \$75,000, exclusive of interests and costs.

9. At the time this action was commenced, Plaintiff Clara Newsome was, and still is, a resident of Fort Bend County, Texas. Petition at ¶ 2.

10. State Farm was at the time this action commenced, and still is, an unincorporated insurance association whose underwriters were, and still are, citizens of states other than Texas.

See Affidavit of Jim Larson.; *Royal Ins. Co. v. Quinn-L Capital Corp.*, 3 F.3d 877, 882-83 (5th Cir. 1993) (citizenship of unincorporated association determined by citizenship of members). Accordingly, State Farm is not a citizen of the State of Texas. See *Griggs v. State Farm Lloyds*, 181 F.3d 694, 698 (5th Cir. 1999) (finding that State Farm Lloyds is a citizen of Illinois); *Alonzo v. State Farm Lloyds*, No. SA-06-SA-0326-XR, 2006 WL 1677767, at *1 (W.D. Tex. June 12, 2006) (State Farm Lloyds held to be diverse from Texas plaintiffs); *Caballero v. State Farm Lloyds*, No. CA-C-03-266, 2003 WL 23109217, at *1 (S.D. Tex. Oct. 31, 2003) (same); *Rappaport v. State Farm Lloyds*, No. 3:97-CV-2747, 1998 WL 249211, at *2 (N.D. Tex. May 8, 1998) (same).

11. Defendant Eric D. Thibault was at the time this action commenced, and still is, a resident and citizen of Mississippi. Petition at ¶ 4. *Preston v. Tenet Healthsystem Mem'l Med. Ctr., Inc.*, 485 F.3d 793, 798 (5th Cir. 2007) (relevant inquiry is place of domicile which is state of residence and the intention to remain).

12. Plaintiff's Original Petition expressly alleges damages in excess of \$100,000 satisfying the "amount in controversy" requirement of 28 U.S.C. § 1332(a). Petition at ¶ 6.

IV. **REMOVAL PROCEDURES**

13. State Farm was served with process on January 6, 2016. Upon information and belief Defendant Eric D. Thibault has not been served with process. This Notice of Removal is being filed on February 5, 2016. Accordingly, this Notice of Removal is timely filed within 30 days of when State Farm received a copy of Plaintiff's Original Petition and within one year of the commencement of this suit. See 28 U.S.C. § 1446(b).

14. Plaintiff filed this action in Fort Bend County, Texas. The Houston Division of the Southern District of Texas encompasses Fort Bend County, Texas. *See* 28 U.S.C. § 124(b)(2). Thus, venue is proper because this district and division embrace the place where the state court action is pending. *See* 28 U.S.C. § 1441(a).

16. All information and documents required by 28 U.S.C. § 1446(a) and by Local Rule 81 to be filed with this Notice of Removal are attached and indexed in Exhibit A.

17. A copy of this Notice of Removal will be filed with the Fort Bend County District Clerk's office and served on the Plaintiff promptly. *See* 28 U.S.C. § 1446(d).

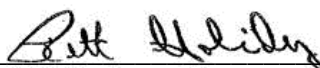
V.
PRAYER

Defendant, State Farm Lloyds respectfully requests that the above-styled action now pending in the 434th Judicial District Court of Fort Bend, Texas be removed to this Honorable Court pursuant to the Court's diversity jurisdiction, that upon final trial, judgment be rendered that Plaintiff take nothing by her suit against State Farm Lloyds, and for such other and further relief to which State Farm Lloyds may be justly entitled.

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Respectfully submitted,

GERMER PLLC

By: _____

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**ATTORNEY-IN-CHARGE FOR DEFENDANT
STATE FARM LLOYDS**

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was forwarded to all known counsel pursuant to the Federal Rules of Civil Procedure on this the 5th day of February, 2016.

_____
DALE M. "RETT" HOLIDY

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AFFIDAVIT OF JIM LARSON

This day appeared before me, the undersigned authority, JIM LARSON, who after being duly sworn, deposed and stated as follows:

1. "My name is Jim Larson. I am over the age of 18, I have never been convicted of a felony or crime involving moral turpitude, and I am otherwise competent to make this affidavit.

2. I am an Assistant Secretary - Treasurer of State Farm Lloyds, Inc. ("Lloyds, Inc."), attorney-in-fact for State Farm Lloyds. I am also the Assistant Vice-President - Accounting for State Farm Mutual Automobile Insurance Company ("State Farm Mutual"). My address is One State Farm Plaza, Bloomington, Illinois 61710-0001.

3. As part of my job duties for State Farm Mutual, I have responsibility for the department that prepares and files the Annual Statements and similar filings for State Farm Mutual and each of its property and casualty insurance subsidiaries and affiliates, including State Farm Lloyds.

4. State Farm Lloyds is an association of individual underwriters authorized to conduct business in Texas as a Lloyd's plan insurer as defined and set out in Chapter 941 of the Texas Insurance Code.

5. As a Lloyd's plan insurer, State Farm Lloyds has designated an attorney-in-fact as provided under Texas law. Lloyds Inc., a Texas business corporation, is the attorney-in-fact in Texas for State Farm Lloyds and, as such, Lloyds Inc. is the agent of State Farm Lloyds.

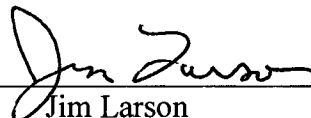
6. As an officer of these State Farm companies, I have knowledge of their respective directors, principal officers or underwriters, the type of entity each is, and other similar information. I have firsthand knowledge of the statements in this Affidavit pursuant to my duties in the above positions and they are true and correct.

7. On November 30, 2015, the Texas Department of Insurance notified State Farm Lloyds that its Amended Articles of Agreement dated July 10, 2015 had been placed on file and that its records had been updated to reflect the following changes to the underwriters: Mary Angela Schmidt replaced Roderick Moore Matthews. The underwriters following the changes made by the Amended Articles of Agreement are listed below:

- Angela Kaye Sparks
- Susan Quasebarth Hood
- Mark Edward Schwamberger
- Jon Charles Farney
- Mary Angela Schmidt
- Kevin Harper McKay
- Joseph Riley Monk, Jr.
- Kathleen Mary Pechan
- Patricia Elizabeth Roark
- Laurette Catherine Stiles
- Jack W. Watts, Jr.
- Robert Hun Sang Yi

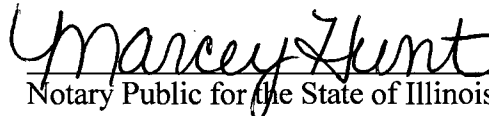
8. At all times since the November 30, 2015 acceptance of the latest Amended Articles of Agreement by the Texas Department of Insurance, the above named underwriters have had their residences and full time places of employment in the State of Illinois.

FURTHER AFFIANT SAYETH NAUGHT."



Jim Larson

SUBSCRIBED TO AND SWORN TO before me, the undersigned authority on this
the 1st day of February, 2016.



Notary Public for the State of Illinois

